IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3216 OF 2007

Apna Sahakari Bank Limited ..Petitioner

Vs.

1. Mohammed Ali Abdul Kadar Patel and anr. ..Respondents

Mr. A.J. Jadhav for petitioner.
Mr. Pradeep J. Ramchandani for respondent nos.1 and 2.

CORAM: B.H. MARLAPALLE, J.

Date : June 22, 2007.

P.C.:

1. Heard the learned counsel for the petitioner-Bank.

2. Rule. Respondents waive service. Rule is heard forthwith.

3. The respondents are the plaintiffs in R.A.E. Suit NO. 905/1420 of 2005 and the petitioner was impleaded as the defendant. The suit has been filed for seeking a decree of eviction from the suit premises i.e. Shop No.5 on the ground of non user.

The suit summons were received by the petitioner on 3/10/2005 and it failed to file its Written Statement within first 30 days as well as extended 60 days and, therefore, the suit was directed to proceed ex parte. On or about 24/4/2006 an application at Exh.6 was moved by the defendant-bank praying for condonation of delay in filing the Written Statement and to take the same on record. Along with the said application Written Statement duly affirmed was also annexed. The said application came to be rejected by the Small Causes Court at Mumbai on 2/5/2006 and, therefore, Revision Application No. 288 of 2006 came to be filed before the Division Bench of the very same court. The revision also has been dismissed on 6/3/2007 and hence this pettiion under Article 227 of the Constitution.

4. The learned Judge of the Small Causes Court held that the defendant failed to prove that there were exceptional circumstances to condone the delay and alllow the Written Statement to be filed beyond 90 dyas. The trial court had referred to the judgment of the Supreme Court in the case of Salem Advocate Bar Association, Tamil Nadu Vs. Union of India [2003(3)

Bombay C.R. (S.C.) 327]. The revision court agreed with the said reasoning and thus both the courts below are against the petitioner.

5. There is no doubt that in respect ofthe very same premises the plaintiff-landlord had filed R.A.E. Suit No. 31/50 of 2004 and rather than filing a fresh suit on a different ground and this amendment also could have not only avoided the multiplicity of litigation but, in fact, the composite suit could have been heard and decided earlier. It is admitted that in the said pending suit the bank had appeared and filed its Written Statement and contested the suit. The said suit has been dismissed on merits on 19/6/2006 i.e. after the application at Exh.6 was rejected by the trial court in the fresh suit. Though the defendant claimed that some negotiations for an amicable settlement were going on, prima facie, there was no proof in support of this contention. However, by that itself would not be a reason to hold that the defendant failed to make out a case of exceptional circumstances to condone the delay beyond 90 days. The parties were already litigating in respect of the

very same premises and in a suit pending for eviction but on the ground of bonafide requirements. The subsequent suit has been filed for eviction on the ground of non user. Earlier suit has already been dismissed on merits on 19/6/2006 and, therefore, in the peculiar circumstances of this case, it would be just and proper that the delay caused in filing Written Statement is condoned and it is taken on record but by levying exemplary costs.

6. Hence, the petition is hereby allowed and the impugned orders are quashed and set aside. The application at Exh.6 is made absolute and the delay caused in filing the Written Statement is hereby condoned subject to payment of costs quantified at Rs.5000/- and to be remitted within a period of two weeks from today in the trial court. On remittance of costs, the Written Statement shall be taken on record and exhibited. The plaintiffs are at liberty to withdraw the costs amount. In the alternative, costs amount may be paid directly to the plaintiffs.

7. Rule is made absolute accordingly.

(B.H. Marlapalle,J.)